IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.499 OF 1992

DATE OF DECISION: FEBRUARY 14, 2007

Pritpal Singh and another

.....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. M. S. Dhillon, Advocate,
for the petitioners.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioners, who are son and a father, were tried and convicted for an offence under Section 61(1)(a) of Punjab Excise Act and sentenced to suffer R.I. For 1 year coupled with fine of Rs.1500/- each. They were to further undergo RI for 3 months in default of payment of fine. The petitioners went in appeal against the said judgment dated 10.2.1992, which was also dismissed by the Appellate Court on 28.7.1992.

The case was registered against the petitioners on the basis of a secret information received by ASI Gurpal Singh on 1.6.1988. It is alleged that the petitioners were indulging in sale of liquor in the area of Dhobi Mohalla, Jalandhar. A raid was conducted on their Haveli and certain boxes of whisky

were found lying there. Total number of 79 cases were recovered, out of which 68 were of rum, 4 of drygin and 7 of Brihans Grapes Brandy, besides some loose bottles. A case under Section 61(1)(a) of the Punjab Excise Act (hereinafter referred to as "the Act") was registered against the petitioners. On the basis of evidence led before the trial Magistrate and considering the plea raised by the defence, the petitioners were convicted and sentenced to suffer RI as brought out. Even the appeal filed was dismissed and that is how the present revision is filed and is pending since the year 1992.

Mr.M.S.Dhillon, learned counsel appearing for the petitioners, would contend that the case is of 1988 vintage for which the petitioners faced prolonged trial, which concluded in the year 1992. Their appeal having been dismissed in the same year, the petitioners are constantly under threat of this sentence, though their revision stands admitted and sentence is suspended since 1992. Referring to this background, Mr.Dhillon would contend that he would not assail the finding of the Courts on merit but would plead for compassion and leniency. As per the learned counsel, it would be rather unfair to make the petitioners to undergo this sentence at this belated stage. The counsel would accordingly pray that the petitioners be released on probation. Though the trial Court had considered the aspect of release of the petitioners on probation but no special reasons for declining the said concession are found recorded. The Appellate Court, however, did not apply itself to this aspect. Reference is made to ***Saheg Singh Vs. State of Haryana,*** 2006 (1) RCR (Criminal) 735 and ***Bachittar Singh Vs. State of Punjab,*** 2004 (1) RCR (Criminal) where this Court ordered the

release of the accused on probation, considering pendency of the case for a prolonged period.

It cannot be denied that this incident is rather old. The petitioners would suffer the consequences of the sentence, which has been awarded to him due to an incident, which is more than 18 years old. I see reason and justification in the prayer made by the counsel for the petitioner that if conviction and sentence are allowed to stand, it may affect the petitioners and their family. The petitioners have apparently suffered enough because this conviction and sentence must be weighing in their mind for all these years. Nothing has been pointed out before me by the learned State counsel, which could stand in the way of the petitioners for grant of their release on probation. A prayer for release of the petitioners on probation was made before the trial Magistrate, which, however, was declined, but the Appellate Court did not take this aspect into consideration at all. The Hon'ble Supreme Court in the case of ***Chandreshwar Sharma Vs. State of Bihar,*** JT 2000(2) SC 36 has held that reading of Sections 361 and 360 of the Code together would indicate that in any case where the courts have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of said provision then it shall record in its judgment the specific reasons for not doing so. This apparently has not been done by the Appellate Court and thus the court has over looked the provisions of Sections 360 and 361 Cr.P.C. It can be said that the Appellate Court did not perform its mandatory duty.

Taking all these aspects into consideration, I am of the view that the submission made by the counsel for the petitioners

would need acceptance. Accordingly, while disposing of this petition, I am inclined to direct that the petitioners be released on probation for a good conduct instead of sentencing them and they be directed to enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate, Jalandhar, within one month of this order.

The present revision petition is accordingly disposed of.

February 14, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**